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4 UNITED STATES DISTRICT COURT
5 EASTERN DISTRICT OF WASHINGTON

6 FELIX CORONA, }
7 Movant, } NO. CR-09-6008-WFN
8 -vs- }
9 UNITED STATES OF AMERICA, } ORDER
10 Respondent. }

11 Before the Court is Defendant's *pro se* Motion to Vacate, Set Aside or Correct
12 Sentence by a Person in Federal Custody Pursuant to 28 U.S.C. § 2255, filed November 12,
13 2010 (ECF No.38).

14 **I. BACKGROUND**

15 Mr. Corona was indicted on February 10, 2009, for being an alien in the United States
16 after deportation in violation of 8 U.S.C. § 1326. He pled to Count 1 on April 8, 2009 (ECF
17 No. 28). In his Plea Agreement, Mr. Corona agreed to "waive any right to appeal this
18 conviction and the sentence," as well as "any right to collaterally attack this conviction and
19 sentencing under 28 U.S.C. § 2255". (ECF No. 29) On May 19, 2009, this Court sentenced
20 him to 33 months of incarceration pursuant to the fast track program. (ECF No.35) The time
21 for appeal runs for 14 days, so judgment was final on May 24, 2009.

22 **III. DISCUSSION**

23 The Court entered an Order requesting that Mr. Corona justify his untimely
24 submission. (ECF No. 39) Mr. Corona provided a response wherein he indicates that
25 "when he discovered the counsel's failure it could be in time, but he was segregated by the
26 Bureau of Prisons" (ECF No. 40) The Court issued another Order finding that Mr.

1 Corona's untimely submission could not be justified by 28 U.S.C. § 2255(f)(4), but requested
2 that Mr. Corona submit additional information so the Court could make a determination
3 whether equitable tolling would apply. (ECF No. 41) The Court set a deadline of March 23,
4 2011. The Court warned that failure to file the requested supplement would result in
5 dismissal of this § 2255 Motion with prejudice. (ECF No. 41) Mr. Corona did not file the
6 requested supplement.

7 Without facts supporting Mr. Corona's assertion that the statute of limitations should
8 be tolled, the Court finds that the statute of limitations applies in this case and that Mr.
9 Corona's § 2255 Motion should be dismissed with prejudice because it is untimely.

10 **III. CERTIFICATE OF APPEALABILITY**

11 An appeal of this Order may not be taken unless this Court or a Circuit Justice issues
12 a certificate of appealability, finding that "the applicant has made a substantial showing of
13 the denial of a constitutional right." 28 U.S.C. § 2253(c)(2) (West 2004). This requires a
14 showing that "reasonable jurists would find the district Court's assessment of the
15 constitutional claims debatable or wrong." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).
16 "When the district court denies a habeas petition on procedural grounds without reaching the
17 prisoner's underlying constitutional claim, a COA should issue when the prisoner shows, at
18 least, that jurists of reason would find it debatable whether the petition states a valid claim
19 of the denial of a constitutional right and that jurists of reason would find it debatable
20 whether the district court was correct in its procedural ruling." *Id.* A certificate of
21 appealability should not be granted unless both components, one directed at the underlying
22 constitutional claims, and the second directed at the court's procedural holding, are satisfied.
23 *Id.*

24 Based on the Court's preceding analysis, the Court concludes jurists of reason would
25 not find the Court's statute of limitations ruling debatable. Thus, a certificate of appealability
26 should not issue. Accordingly,

The District Court Executive is directed to:

- DATED** this 19th day of April, 2011.

s/ Wm. Fremming Nielsen
WM. FREMMING NIELSEN
SENIOR UNITED STATES DISTRICT JUDGE